

Spiegel



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Beckman Instruments, Inc.--Request for
Reconsideration

File: B-239293.2

Date: June 22, 1990

Robert L. Herich, for the protester.
Robert A. Spiegel, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

General Accounting Office's timeliness requirements are not tolled by continued pursuit of a protest at the procuring agency after that agency has taken initial adverse action following an agency-level protest.

DECISION

Beckman Instruments, Inc. requests reconsideration of our dismissal of its protest against the award of a contract to Lab Performance Specialists, Inc. under invitation for bids (IFB) No. 554-57-89, issued by the Department of Veterans Affairs (VA) for emergency service and maintenance work at the VA Medical Center in Denver, Colorado. We dismissed the protest because it was not filed within 10 working days after Beckman became aware of initial adverse agency action following its agency-level protest. We affirm our dismissal of the protest.

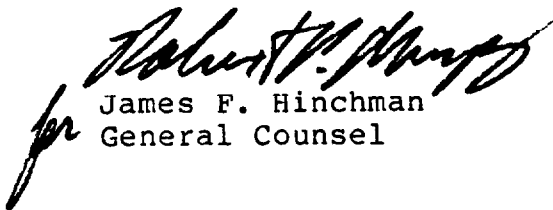
On December 4, 1989, Beckman filed a protest with VA. In this agency-level protest, Beckman alleged that the awardee, Lab Performance Specialists, was lacking in the parts inventory, trained personnel and response time required by the solicitation. VA regarded the Beckman protest as essentially a challenge to the responsibility of the awardee and denied Beckman's protest by letter of February 5, 1990. By letter of February 14, Beckman asked VA to reconsider its denial of the protest. On March 30, VA denied Beckman's request for reconsideration on the ground that the protester had not presented any new evidence in support of its request. Beckman filed a protest with our Office on April 13, which we dismissed as untimely on that

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same day. On April 20, Beckman requested that we reconsider our prior decision.

Although an aggrieved contractor is not required to protest first to a procuring agency before filing with our Office, where a contractor chooses to file initially with the procuring agency, our Bid Protest Regulations require that a subsequent protest to our Office be filed within 10 working days after the protester has acquired knowledge (actual or constructive) of initial adverse agency action regarding the protest. 4 C.F.R. § 21.2(a)(3) (1990); Rocky Mountain Helicopters, Inc.--Request for Recon., B-231898.2, Aug. 22, 1988, 88-2 CPD ¶ 169. Beckman's original protest was denied by an agency letter, which constituted initial adverse agency action on the protest. Thus, the protest filing period with our Office began to run upon the protester's receipt of that communication which was dated February 5. We know from its mid-February request to the VA for reconsideration that the protester must have received the letter by that time, yet it failed to file its subsequent protest with our Office until approximately 2 months thereafter. Our timeliness requirements are not tolled by continued pursuit of a protest at the procuring agency (such as by requesting reconsideration at the agency) after the agency has taken initial adverse action concerning the agency-level protest. Id.

The dismissal of this protest is affirmed.


James F. Hinchman
General Counsel